United Nations A/HRC/29/28/Add.2

General Assembly

Distr.: General
2 April 2015

Original: English

**Human Rights Council**
**Twenty-ninth session**
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

**Addendum**

## Report on the First African Regional Forum on Business and Human Rights*,**

*Summary*

The present document provides a summary of the discussions of the African Regional Forum on Business and Human Rights, held from 16 to 18 September 2014, in Addis Ababa, and the conclusions and recommendations by the Working Group based on its reflections on the proceedings. The agenda for the Forum, the text of the main statements and the documents submitted by some of the participants can be found on the Working Group's website.[1]

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

** The appendix is circulated as received.

[1] www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

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## Annex

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# Report on the First African Regional Forum on Business and Human Rights

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# I. Introduction and background

1. The endorsement of the Guiding Principles on Business and Human Rights (hereinafter, the Guiding Principles)[2] by the Human Rights Council in June 2011 in its resolution 17/4 represented a milestone in global efforts to close governance gaps between the scope and impact of economic actors and the capacity of society to manage their adverse impacts. This provided for the first time a United Nations-backed framework to define the respective duties and responsibilities of Governments and business enterprises for preventing and addressing adverse human rights impacts arising from business activities. In order to advance the Guiding Principles, the Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises with a mandate to promote the dissemination and implementation of the Guiding Principles worldwide.[3]

2. As part of its efforts to engage a wider set of actors, the Working Group decided in November 2012 to organize regional forums to complement the annual Forum on Business and Human Rights.[4] Such regional forums would seek to enable more direct engagement with stakeholders charged with putting the three pillars of the Guiding Principles into practice "on the ground", including Government institutions, national business associations, business enterprises with a regional and domestic reach, national and local civil society groups, and regional organizations and mechanisms. The first regional forum, for the Latin America and the Caribbean region, was held from 28 to 30 August 2013 in Medellín, Colombia.[5]

3. In June 2014, in its resolution 26/22, the Human Rights Council welcomed the work of the Working Group in the fulfilment of its mandate, including the convening of regional forums to discuss challenges and lessons learned from the implementation of the Guiding Principles with States and other stakeholders in a regional context.

# II. The African Regional Forum

4. The African Regional Forum on Business and Human Rights was held in Addis Ababa, from 16 to 18 September 2014. It was convened by the Working Group with the support of the African Union Commission's Department of Political Affairs, the United Nations Economic Commission for Africa (UNECA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The United Nations Development Programme and the United Nations Global Compact also assisted with the organization of the event.

5. The regional forum aimed to promote multi-stakeholder dialogue and cooperation on business and human rights and the implementation of the Guiding Principles in Africa, with a view to: (a) advancing the business and human rights agenda in the region and promoting progress with regard to all three pillars of the United Nations "Protect, Respect and Remedy" Framework; (b) identifying regional implementation experiences, challenges and opportunities; (c) identifying opportunities for embedding the Guiding Principles in

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[2] The Guiding Principles are contained in the annex to document A/HRC/17/31.

[3] See, inter alia, Human Rights Council resolution 22/26.

[4] See outcome of the third session of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/WG.12/3/1, para. 17.

[5] See www.ohchr.org/EN/Issues/Business/Forum/Pages/2013LACRegionalForumBusinessandHumanRights.aspx.

regional and subregional governance frameworks, and exploring the synergies between the Working Group's mandate and the work of regional and subregional African institutions and mechanisms; (d) identifying linkages between the business and human rights and sustainable development agendas from a regional perspective; and (e) promoting and supporting capacity-building opportunities in relation to the Guiding Principles.

6. The forum was open to all relevant stakeholders, including Governments, international and regional bodies, global, regional and domestic business, industry associations, trade unions, affected persons and community members, civil society, national human rights institutions, the United Nations and other international organizations. Approximately 200 individuals from all the stakeholder groups participated, which included participants travelling from some 30 African countries. In addition, several diplomatic missions based in Addis Ababa attended.

7. The event featured 12 official panel sessions and seven side events over three days.[6] Side events addressed both general and more specialized aspects concerning implementation of the Guiding Principles. The official plenary and parallel sessions focused on ways to advance implementation of the Guiding Principles across Africa, including by enhancing access to remedy for business-related human rights abuse, sector-specific trends and challenges (respectively in the extractive sector and in land investment), challenges faced by African business in implementing the corporate responsibility to respect human rights, building an African strategy on business and human rights, the importance of national action plans to implement the Guiding Principles and, in particular, the challenges and roles of national human rights institutions and human rights defenders in promoting corporate accountability. The human rights issues featured on the forum's agenda reflected inputs solicited by the Working Group in its pre-consultations with stakeholder groups.[7]

## III. A vision for implementing the United Nations "Protect, Respect and Remedy" Framework across Africa

8. During the high-level opening session, aimed at setting out a vision for implementing the Guiding Principles in the region, all speakers acknowledged the importance of the regional forum, emphasizing its role of fostering multi-stakeholder dialogue and advancing the business and human rights agenda in Africa. They also referred to the importance of the Guiding Principles and called for joint efforts to promote their implementation in the region.

9. The representative of the Working Group stressed that the Guiding Principles served as the key reference point for global efforts to strengthen the protection of human rights in the context of business activities, highlighting that they were not "voluntary" guidelines but grounded in legally binding norms and standards and provide authoritative guidance on the application of existing core international human rights treaties in that area. All African States were encouraged to initiate inclusive multi-stakeholder processes to develop national action plans on business and human rights. Steps taken to initiate such processes in the

[6] Summaries of the side events and the names of panel speakers are included in the appendix to the present report. The African Union Commission and the European Union also jointly organized a seminar on business and human rights on the margins of the regional forum (see http://pa.au.int/en/content/african-union-and-european-union-cooperate-promote-un-principles-business-and-human-rights).

[7] See in particular submissions from the Business and Human Rights Resource Centre, available from www.ohchr.org/EN/Issues/Business/Forum/Pages/SubmissionsAfricaRegionalForum.aspx.aspx.

region, including in Ghana, Morocco, Mozambique and the United Republic of Tanzania, were welcomed.

10. In highlighting some of the human rights issues facing the continent, a representative of the Working Group called strongly for multi-stakeholder dialogue and cooperation, noting that it was only through a dialogue between all parties — States, business enterprises, national human rights institutions, civil society and affected communities — that effective solutions could be found.

11. The representative of the African Union Commission noted that African leaders agreed that business and human rights is a crucial issue. Attention was drawn to the 2011 African Union human rights strategy for Africa, which sought to address the current challenges facing the African human rights system in ensuring effective promotion and protection of human rights on the continent. Additional steps that had been taken with regard to business and human rights specifically were also highlighted, including: (a) creation of the African Commission's Working Group on Extractive Industries, Environment and Human Rights Violations; (b) development of the African Mining Vision; and (c) strong advocacy by many national human rights institutions on the continent regarding business and human rights issues, based on the Guiding Principles.

12. The representative of the African Union Commission reiterated its commitment to the Guiding Principles and the development of an African framework on business and human rights based on the Guiding Principles.

13. The representative of UNECA said that the protection of human rights was compatible with business, and that there was a need for a human rights-based approach to development, as a crucial part of the post-2015 agenda. It was underlined that there was a need for a common African position on how business could be most beneficial for human rights and that the Guiding Principles was a vital document in that regard, as the pursuit of human rights was a social and economic necessity for inclusive and sustainable development and cohesive societies.

14. The representative of the Government of Ethiopia emphasized that, in the efforts of the continent to lift millions out of poverty through economic development, human rights needed to be protected by both Governments and the private sector.

## IV. Identifying key business and human rights challenges and opportunities across the continent

15. A central aim of the regional forum was to identify some of the main business and human rights issues in Africa and discuss how various stakeholders could address them by applying the Guiding Principles. Perspectives on the state of play and opportunities for the way forward were shared by different actors.

16. The representative of the International Labour Organization (ILO) welcomed the African Union's interest in the issue and stressed that the contextualization of the Guiding Principles was crucial, including through the development of national action plans. The need for coordination among African Governments was underlined and the key importance for African States to sign, ratify and implement the ILO conventions, in particular the eight ILO core conventions, noted. The progress seen with regard to the application of the ILO conventions in Africa was welcomed and the positive trend of decreased use of child labour was noted. The need to focus on groups that were particularly vulnerable, such as women, migrants or domestic workers, was also highlighted.

17. A representative of Business Africa, representing the perspective of African employers' federations, underlined the need to encourage all stakeholders to commit to

reducing adverse human rights impacts by companies on the ground. With regard to human rights challenges on the continent, it was noted that they differed widely across countries, but problems such as weak governance, the legacy of colonialism, ethnic tensions or poverty were relevant in most parts of Africa. Governments were called upon to do much more, including: (a) strengthening public governance and legal systems to ensure redress, noting that the implementation of the Guiding Principles crucially required rule of law and that weak judicial systems were a major problem; (b) addressing the challenge of the informal sector and facilitating transition to formality; and (c) developing national action plans to implement the Guiding Principles, which should be done in close consultation with business.

18. Another point raised was the need for better dialogue between Western and African Governments, as well as international non-governmental organizations (NGOs). Such dialogue was necessary to help African States avoid the negative impacts of regulation introduced by States in the West, examples being the conflict minerals reporting requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of the United States of America and reported negative impacts for people on the ground in the Democratic Republic of the Congo.

19. The discussion also featured an example to highlight the value of the Guiding Principles as a tool for enhancing multi-stakeholder dialogue: a project called "pillars in practice" where the Guiding Principles had been applied by an NGO in the mining sector in Zimbabwe to address adverse human rights impacts arising from extractive operations. The Guiding Principles had provided a helpful platform for engagement in many ways, including by: enabling a more constructive engagement with the Government and business; and providing an authoritative framework defining the duties and responsibilities of the Government and companies.

20. However, it was noted that, despite the progress, there was still mistrust and hostility from business and Governments towards civil society and collaboration needed to improve.

## V. Preventing and addressing adverse human rights impacts in the extractive industries: challenges, opportunities and current practice

21. Human rights challenges in the extractive sector had been identified as a key issue for the regional forum and, during multi-stakeholder discussions, participants sought to shed further light on those challenges, as well as innovations in corporate practice, public policy and civil society advocacy.

22. The work of the African Minerals Development Centre to support implementation of the African Mining Vision was highlighted. That framework, adopted by the African Union Heads of State and Government in February 2009, establishes that the extraction of mineral resources on the continent should be in accordance with labour standards and respect for human rights.

23. An important development cited was the establishment of the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights in 2009 with a mandate to examine the impact of the extractive industries in the light of the African Charter, to research specific issues and to inform the Commission of potential steps to take. The issues that the Commission's working group was examining included: (a) inadequate mechanisms used by companies to engage communities, often made in a "tick-the-box" manner without the possibility for the community to bring alternatives to the table; (b) environmental impact assessments that

frequently did not reflect the requirements set by relevant laws and standards; (c) the effect of extractive industries on access to land; (c) lack of coherence within Governments; (d) access to remedy; and (e) free prior and informed consent.

24. Experiences were shared by the Government of Ghana. It was noted that the country was benefiting significantly from mining, but there was serious environmental and social damage occurring, such as water pollution, destruction of land, community resettlement and concerns related to noise from project sites. Examples of how the Government was seeking to address those issues included: mechanisms to ensure adequate compensation for people who needed to be resettled; efforts to strengthen communication between mining companies and communities; and adherence to the Voluntary Principles on Security and Human Rights.

25. With reference to experiences of advocacy relating to a World Bank-financed project in the extractive sector in Chad, it was observed that, in a context where there was a relative absence of Government, civil society took over the role of trying to protect people from negative impacts. However, civil society actors faced a number of challenges related to: (a) lack of democracy and possibilities for political participation; (b) lack of access to education; (c) impunity of those in power; asymmetric power relations and government-business collusion; and (d) lack of effective avenues for access to justice.

26. A participant from a major mining corporation noted that respecting the rights of communities was the right thing to do, but that there was also a "business case" for it. Among the challenges experienced by that corporation in implementing the Guiding Principles, the following were noted: migration issues — mining projects attracting people and the influx of people bringing social problems; security at the project site and the question of what capacities and instruments could be given to private security providers; and Governments that failed to respect human rights.

27. An industry-based multi-stakeholder initiative with a specific business and human rights focus was presented at the forum as one possible model for overcoming challenges. The so-called "Nairobi Process" aimed to embed the Guiding Principles in the oil and gas sector in East Africa and included three main work areas: creating knowledge — gaining understanding of human rights risks; capacity-building — informing and training stakeholders; and establishing a space for dialogue with Government, civil society and companies.

28. Research showed that the oil and gas sector in East Africa (which consisted mainly of small and medium-sized companies) had both positive and negative impacts: positive — creation of livelihood opportunities, some support for education and sometimes improved access to water; negative — inadequate information causing conflicts with communities, lack of sustainability of the investment and non-respect of community land rights.

29. Several other aspects relating to the oil and gas sector were addressed during the Forum, including: (a) the need for companies to respect human rights regardless of how Governments were meeting their respective duties; (b) the frequent failure to engage and informing communities before decisions about licensing were made; (c) community engagement and how to deal with community complaints about impacts of mining operations; and (d) the role of companies in Ebola-affected countries.

# VI. Discussions on access to remedy

## A. Multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts

30. The aim of the session was to seek input from African experts and stakeholders for a consultative process led by OHCHR, in cooperation with the Working Group, pursuant to Human Rights Council resolution 26/22, which requested OHCHR to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses.

31. It was stressed that access to effective remedies for victims of human rights abuse was a critical component of any legal system and of all the core international human rights treaties. It was also a central component of the Guiding Principles and the third pillar on access to effective remedy.

32. As part of the project it was leading on enhancing accountability and access to remedy in cases of business involvement in human rights abuses, OHCHR had commissioned a study on corporate liability for gross human rights abuses and ways to move towards a fairer and more effective system of domestic law remedies. In brief, the study, which examined a number of jurisdictions, found that:[8]

(a) The expanding net of liability was not yet translating into an effective system of remedies in practice;

(b) The current tendency of litigants to favour action in foreign courts was costly and inefficient and might have adverse consequences in the longer term;

(c) There were uneven levels of legal protection and inequalities in the ability of victims to access justice;

(d) There was currently a lack of legal certainty for both victims and companies;

(e) There was lack of a level playing field for companies.

33. The ongoing consultative multi-stakeholder process was addressing several aspects, including:

(a) Clarification of the various tests for corporate liability currently applied in different jurisdictions;

(b) Roles and responsibilities of interested States in relation to standard-setting and enforcement;

(c) Identification of good State practice in relation to three key areas of focus:

(i) Funding for legal claims;

(ii) Criminal law sanctions (corporate legal responsibility, innovative practice in different jurisdictions);

(iii) Civil law remedies;

(d) The practice of domestic prosecution bodies (why cases were not taken up even if the domestic institution was in place).

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[8] The slides from the presentation are available from www.ohchr.org/EN/Issues/Business/Forum/Pages/Statements.aspx.

34. Forum participants heard from a person affected by the 2004 Kilwa massacre in the Democratic Republic of the Congo, in which a mining company had provided logistical support to security forces that committed the violations. That personal account demonstrated the stark reality faced by victims seeking access to remedy. Efforts to seek justice both in domestic courts and abroad had failed to bring results, even 10 years after the event. It was noted how litigation in Canada against the implicated company domiciled there had first seemed to be possible as the Supreme Court had accepted the case, but that then the case was dismissed on grounds of a lack of jurisdiction. During the process, the litigants had been informed that the mining company involved in the massacre had been sold to another company.

35. Another perspective shared by a participant was on the experience of the national human rights institution in Ghana and its function as a quasi-judicial mechanism. Several challenges with regard to ensuring access to remedy for victims were highlighted, including: (a) a lack of protection of human rights in investment law and failure by involved ministries to take access to remedy for victims into account; (b) in spite of regulation on the requirement and a procedure for compensation on land acquisition, a general gap in access to judicial remedy; and (c) a lack of funding for legal aid.

36. Another key issue discussed was the need for capacity-building, including the role of the State in ensuring capacity-building for communities and business. Participants called for further clarification of the concept of company liability and complicity, as well as of the criteria for company due diligence. With regard to the roles and responsibilities of interested States in cross-border cases, it was suggested that host States would welcome the support and cooperation of home States in cases of corporate involvement in gross human rights abuses.

37. Civil society organizations involved in litigation also gave their perspectives during the discussion on access to judicial remedy. One recommended that the approach of strategic litigation in national courts should be tested further. It was suggested that bringing selected cases to court would be a good way to promote legal reform, citing experience from South Africa. It was noted that non-judicial remedy was also important, and that stakeholders should try to make best use of the resources currently available within their own jurisdictions.

38. Several challenges involved in bringing cases of corporate-related human rights abuses to national courts were highlighted, including:

(a) In some jurisdictions, collective litigation was not accepted;

(b) Victims lacked financial support and legal assistance;

(c) There was a lack of capacity at community level: when human rights violations occurred, the victims could not document the facts to bring a case to court;

(d) Companies could not be prosecuted in the host States due to weak enforcement of the rule of law. At international level, it was also hard to get access to remedy. Knowledge about the cost and process to bring cases to courts in other jurisdictions was elusive;

(e) Lack of political will.

39. A representative of African employers' federations suggested that non-judicial mechanisms had an important role to play in providing access to remedy, as they were often less expensive and faster to use than judicial mechanisms. It was noted that, in some countries, the lack of political will, of an independent judicial system, of financial support and of a modern case-management system and the presence of corruption all undermined trust in the judicial system. Suggestions for addressing those gaps included making an

effective national legal system a criterion for accessing international funds. The way forward required action from Governments, but also increased awareness among companies about the need to implement grievance mechanisms.

40. During the discussion on judicial remedy, participants also emphasized the challenges faced by people living in poverty whose human rights were adversely affected by business operations and the need to improve access to legal aid, the possibility of utilizing existing mechanisms, such as consumer protection, and greater potential leverage in cases involving listed companies as opposed to non-listed companies.

## B. Access to non-judicial remedy: experiences and lessons from the continent in ensuring access to remedy for affected stakeholders through operational-level grievance mechanisms

41. The aim of the session was to examine lessons and experiences of operational-level grievances mechanisms across African business operations and reflect on the challenges and opportunities in aligning current practice with the criteria set out in the Guiding Principles to ensure effective remedy outcomes.

42. A premise for the discussion was that operational-level grievance mechanisms could have some advantages in certain circumstances, as they: could act as a system of early warning and early response; provided a process of trust-building among different stakeholders; and served as a mechanism to manage expectations of projects and facilitate community engagement.

43. It was also pointed out that non-judicial mechanisms could fill some of the gaps related to weak governance in some countries.

44. Participants from business suggested that non-judicial grievance mechanisms could be fast and cost-effective, if they kicked in at an early stage, all parties were involved, the expectations held by all parties were clear and the mechanisms were geared towards preventing grievances. With reference to mechanisms such as the Organization for Economic Cooperation and Development system of national contact points and industry-level systems, it was noted that such mechanisms could solve issues more quickly given the use of industry knowledge and expertise. However, it was also underlined that such mechanisms were only effective when people were aware of them and trusted them. In that regard, a main challenge was a lack of resources and consistency. Moreover, it was stressed that non-judicial remedy processes should not undermine judicial remedy, and that States needed to provide a conducive legal environment to level the playing field.

45. Several NGOs gave their views. One NGO shared an example from Kenya, where one company grievance mechanism had handled the issue of childcare needs among workers. The company subsequently set up a childcare facility. It was noted that grievance systems could help companies detect and mitigate problems. However, grievance mechanisms also had limitations. For example, they could not deliver punishment for serious abuses, and workers might be reluctant to use them from fear for losing their jobs. With regard to conducive regulatory frameworks, the standard set by the Employment Act in Kenya with regard to terminating contracts was referenced. It was suggested that it might be helpful if a similar standard was used for operational-level grievance mechanisms.

46. Another key issue underlined was the need for stakeholders to sit down together in an impartial manner to solve issues. It was suggested that States should have a policy to encourage legal remedy and promote grievance mechanisms at company level, and that victims should have options to use all mechanism available. The mechanisms needed to have clear timetables to be efficient and strategic.

47. One participant highlighted the experience of promoting operational-level grievance processes in Nigeria, arguing that each grievance mechanism needed to be tailored to the respective project. Such mechanisms could facilitate early warning and early response, but could not handle serious human rights violations, only smaller conflicts. Grievance mechanisms could serve as a platform for building relationships between different stakeholders and a forum for dialogue, and help to manage the expectation of projects and facilitate community engagement. The cost of grievance mechanisms should be budgeted into the cost of projects, and Governments should encourage companies to have such mechanisms and set standards.

48. A representative of the World Bank Group's Compliance Advisor Ombudsman (CAO), which had been set up to receive complaints directly from people affected by projects sponsored by the International Finance Corporation or the Multilateral Investment Guarantee Agency, also took part in the discussion. It carried out dispute resolution, assessing compliance with International Finance Corporation safeguards (which covered elements of the second pillar of the Guiding Principles) and advising stakeholders. The Ombudsman received complaints when grievance mechanisms at company level either failed or did not exist and, in its experience, the problem was not a lack of human rights-related policies at company level, but rather a lack of implementation of existing policies. It was noted that some problems could be solved through mediation and, as part of the Ombudsman process, local institutions, local Government and local non-governmental organizations could all play a role.

49. All participants stressed the need for joint stakeholder action and that the operational-level grievance mechanisms should meet all criteria set out in the Guiding Principles. It was recalled that the non-judicial remedy process should not undermine the right of victims to access to judicial remedy. A key issue was how to ensure the independence of and trust in operational-level mechanisms.

# VII. Business and human rights in the African context

## A. Integrating the corporate responsibility to respect human rights across African businesses: challenges and opportunities

50. The aim of the session was to identify key challenges and opportunities in implementing the second pillar of Guiding Principles (the corporate responsibility to respect human rights) in the operations of African-based business enterprises, as well as to share emerging good practice to address human rights issues.

51. The discussion highlighted both the potential contribution of the Guiding Principles and some critical challenges for the success of their uptake:

(a) The Guiding Principles could help companies do good business and become good corporate citizens;

(b) In Africa, 80 per cent of companies were small and medium-sized enterprises (SMEs), most of which lacked of awareness about responsible business and the Guiding Principles;

(c) The issue of corruption led to problems in the implementation of laws.

52. Participants stressed that all stakeholders needed to be involved in addressing those challenges and generating an environment which fostered business respect for human rights, and that Governments had a particularly important role to play in bringing about real, transformational change.

53. The discussion also highlighted the emerging recognition that negative impacts on human rights could also have negative impacts on economic success, which was prompting shareholders to increasingly raise questions about human rights issues. As a consequence, it was argued, businesses increasingly wanted to do the right thing. However, challenges such as complex supply chains, a lack of senior management buy-in and the cost implications of human rights due diligence processes mean that companies were not progressing as fast as many would like them to.

54. One participant expressed the view that asymmetric power relations between the State and transnational corporations presented the greatest challenge.

55. Attention was drawn to the vital role that trade unions could play in improving the situation for workers and an example from Ghana was referred to. In 2008, trade unions uncovered abusive conditions for workers in several camps of a Chinese company. The trade unions stepped in and managed to improve the working conditions drastically to make sure the workers got contracts, higher salaries and social security. Engagement with the diplomatic mission had been important in succeeding in that case.

56. As an example of how civil society engaged with business to promote corporate respect for human rights, the representative of the Business and Human Rights Resource Centre drew attention to the organization's approach of posting information from all stakeholders and confronting stakeholders with the allegations it received, asking for comments.

57. Participants gave specific examples of company engagement with external parties aimed at integrating the Guiding Principles into company operations, including:

(a) Nestlé's partnership with the Danish Institute for Human Rights to develop a human rights due diligence programme, including human rights impact assessments in Nigeria and Angola; Nestlé's partnership with the Fair Labor Association on child labour issues, and similar kinds of collaborations involving other companies, including with International Alert in Uganda;

(b) A human rights impact assessment conducted and published by Kuoni in Kenya (tourism sector).

58. The discussion covered lessons from other regions, and the experience of the European Commission in promoting the Guiding Principles was shared with regional forum participants. Attention was drawn to various guidelines that could prove useful in the context of African business:

(a) Sector-specific guidance for implementing the Guiding Principles for the following industries: the employment and recruitment industry; the information, communication and technology sector; and the oil and gas sector;

(b) A booklet for SMEs called "My business and human rights" which provides an introduction into the field in simple language.

59. Other initiatives by the European Commission to strengthen the implementation of the Guiding Principles were flagged as well, such as: encouraging States to develop national action plans on business and human rights; and transparency requirements for large companies from the European Union, which would require companies to report on non-financial issues and thereby enhance transparency on their human rights impacts and measures taken to address them.

60. The discussion also covered issues such as the role of media as a tool to press relevant stakeholders to implement the Guiding Principles, and the challenges of carrying out human rights due diligence on the ground and building the awareness and capacity of relevant staff within companies.

## B. An African strategy to advance the business and human rights agenda

61. The aim of the session was to reflect on options for developing an African strategy on business and human rights through leadership at the regional level, including through promoting development of national action plans.

62. During the discussion, participants highlighted the steps taken by African national human rights institutions to promote implementation of the Guiding Principles and that business and human rights was a priority for the regional network of national institutions. At the network's 2011 conference in Yaoundé, three key areas had been identified: land rights, water and work conditions. With regard to an African regional strategy on business and human rights, the African network of national human rights institutions stressed the following elements as important:

(a) The need to contextualize the Guiding Principles both at country and continental level and identify innovative approaches by all actors;

(b) The Guiding Principles should be integrated in existing processes and become a priority at the African Union level;

(c) The African Union should consider developing a legally binding instrument;

(d) The role of national human rights institutions should be recognized.

63. Civil society participants highlighted and challenged two assumptions that often formed the basis of the business and human rights debate in Africa: first, the notion that Africa had "weak States" was seen as problematic because States were not as weak as they were often made out to be; second, the emphasis on the need for large-scale development could be used as a pretext to ignore concerns raised by local communities.

64. It was argued there was a need to change the conversation, with emphasis on the following points:

(a) Communities needed to have the right to choose their own path to development;

(b) Customary law needed to be taken seriously;

(c) Community experience needed to be the starting point;

(d) Communities needed to be involved before a project was decided upon in order to have the possibility of refusing consent.

65. Those four points were already enshrined in African instruments, such as the African Charter and the resolution of the African Commission on Human and Peoples' Rights on a human rights-based approach to natural resource governance or the African Land Policy Initiative.

66. A representative of UNECA highlighted the need to identify the common interests of companies and States regarding human rights, pointing to the paradox of simultaneous high economic growth rates and increasing poverty in sub-Saharan Africa. The need for inclusive development based on a human rights-based approach was stressed; two crucial issues were access to education and health and the need for States to ensure adequate regulation, including of private-sector service providers.

# VIII. Groups, contexts, sectors and national action plans

## A. Supporting and protecting human rights defenders and the role of national human rights institutions

67. The session aimed to identify challenges faced by human rights defenders and discuss how the Guiding Principles clarify the respective duties and responsibilities of States and business and corresponding actions to address those challenges. A key issue was the role that national human rights institutions could play.

68. It was highlighted that the human rights defenders working on issues related to environmental protection, indigenous peoples, minority rights, people living in poverty and construction projects frequently experienced serious attacks and harassment.

69. With regard to the role that national human rights institutions played in protecting the human rights of human rights defenders, whether they were representatives of NGOs, community-based organizations, trade unions or journalists, several mechanisms were highlighted: possibilities for receiving complaints and carrying out investigations and public hearings; public awareness campaigns; parliamentary submissions; reports to regional and United Nations bodies; authoritative public statements/opinions; and influence on relevant laws and policies.

70. Factors that enabled national institutions to play such roles included: the integrity of commission members and appointment process; financial and operational independence; a comprehensive legislative process, including an enforcement process; and the existence of other effective institutions supporting the "embedding" of a human rights culture, e.g. an independent judiciary and an effective parliament.

71. It was further stressed that, if national human rights institutions were to be credible, they must have a clear mandate and acquire powers set out in law/from the national constitution.

## B. Business and human rights in conflict contexts

72. The session aimed to discuss challenges and good practices related to the implementation of the Guiding Principles in conflict-affected areas and identify ways to strengthen preventive measures and the implementation of the State duty to protect human rights and ensure security.

73. Participants argued that the profit-seeking character and pragmatism of companies had in some cases benefited communities and societies in conflict-affected areas. On the other hand, that same pragmatism had led companies to focus on security measures with the resulting risk of becoming complicit in human rights abuse, as demonstrated by emblematic cases, such as the trade in conflict diamonds (Liberia, Sierra Leone and Zimbabwe) and oil extraction (Niger delta).

74. Guiding Principle 7 was recalled, which clarifies that the risk of human rights is heightened in conflict-affected areas, and States should therefore intervene at the earliest stage possible, provide support for companies in their due diligence, deny support to companies involved in grave human rights abuses and make sure that regulations and policies were appropriate to meet the specific risks of conflict-affected areas. Companies should, as set out under the second and third pillars of the Guiding Principles, conduct due diligence and, where a violation has taken place, ensure mediation and access to remedy.

75. Concerning possible ways to strengthen the State duty to protect, it was suggested there was a need for the home countries of transnational corporations to strengthen direct regulation, given the often weak governance systems in conflict-affected areas. Several participants expressed the view that, for grave human rights impacts, it should be possible to hold corporate entities liable under international human rights law.

76. Attention was also drawn to the outcome of the 2013 International Conference in the Great Lakes Region on natural resources in Bujumbura, which identified the following main challenges:

(a) States frequently did not respect their own laws nor regional and international standards;

(b) It was difficult to collect credible information on the situation on the ground;

(c) The negotiation and content of contracts between the Government and companies were often highly politicized and lacked transparency;

(d) Extractive industries could have negative impacts on access to land, food security and health;

(e) The most important challenge was often the lack of political will to address those issues as well as lack of good governance and exclusion of civil society.

77. In order to address those challenges, three priorities were highlighted: strengthening the inclusion of civil society; strengthening the rule of law; and raising awareness of business and human rights issues among the population, including through media campaigns.

78. Another focus of the discussion was the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict and how it related to the Guiding Principles. The former was adopted in 2008 and defines how international law applies to the activities of private military and security companies when they are operating in an armed conflict zone. It contains a set of good practices designed to help States take measures nationally in order to fulfil their obligations under international law. As such, it is a voluntary initiative and not legally binding. It was clarified that the initiative focused on States because, although problems with private military and security companies had long existed, there was a general lack of national oversight and no international regulation. To date, 50 States had joined that initiative of the Government of Switzerland and the International Committee of the Red Cross.

79. The discussion also underlined the fact that conflicts could occur in seemingly peaceful environments. In that regard, South Africa was given as an example, where there had been cases of conflict around extractive industry sites, including the Marikana incident where 39 miners were killed in clashes with security forces. Participants argued that it was crucial to unpack what "heightened due diligence" meant in those contexts, because a lot of things could go wrong if due diligence was not carried out properly.

80. With regard to the issue of security and dealing with private and public security forces, it was stressed that there were many existing guidelines, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers, but that, in order to increase incentives for companies to adhere to them, there was a need for better legislation.

81. International Alert's guidance on conflict-sensitive business practice was highlighted as an available tool for conducting impact assessments in conflict contexts. Companies needed to assess their impacts from a rights-holder's perspective; some participants argued that standard social and environmental impact assessments to a large

extent took a company perspective and failed to engage with communities' concerns. Human rights impact assessments were seen as much more promising in that regard.

82. It was further stressed that companies needed to act ethically and with integrity and, if that was not possible, they should not invest. A key question to be asked of companies investing in mines being built at the beginning of a project was whether the mine could be built without a bullet being fired. If not, it was suggested that companies should probably not invest in the first place. The need for a zero-harm policy not only for company staff but also for the community was emphasized. Besides avoiding negative impacts, companies should use their leverage and engage with stakeholders and communities to try to help resolve existing or emerging conflicts in peaceful ways.

83. Further discussion addressed: different types of conflict scenarios in which companies were operating and the need for meaningful community engagement and empowering communities and civil society to be in a position to manage impacts; the relationship between the Guiding Principles and the Voluntary Principles on Security and Human Rights; the need for integrating gender analysis into any corporate activity in conflict-affected areas; and how companies could contribute positively to improving State conduct.

## C. Investment in land: applying a human rights lens

84. The session aimed to identify challenges and opportunities in implementing the Guiding Principles in land-related investments and business activities. The focus was on agribusiness and large-scale land investments, including the implications of impacts on women's rights.

85. The discussion highlighted several key human rights issues, such as a lack of consultation with local communities, loss of land and land acquisition without fair compensation, forced resettlements, food insecurity and loss of livelihoods, and poor working conditions for those employed in the sector. Case studies of corporate land investments carried out by Oxfam were referred to, which found that, even if a company had good policies and practice in relation to land rights, women were not commonly involved in the consultation process and their land rights were not respected. The lack of recognition of the rights of women and adverse impacts on their rights among investors was found to be prevalent, and there was an urgent need to ensure empowerment and meaningful engagement of affected women in that context.

86. The South African Human Rights Commission had also uncovered cases where projects that were publicized as demonstrating good practice with regard to respect for human rights showed a different reality, and that the affected poor community had not been empowered to engage meaningfully. It was suggested that good practice would include elements such as gender-sensitive budgets that supported promotion of gender equity.

87. A business representative stated that the Guiding Principles provided a good starting point for companies to deal with business and human rights issues. In terms of practical approaches, the need to build trust among different stakeholders and engender mutual communication were emphasized and, at the same time, it was noted that such processes took time and that companies faced a range of challenges (political history and context, social expectations, environmental concerns, agronomical targets, economic costs and the legal landscape) that had to be balanced. Free, prior and informed consent and participatory approaches were seen as key elements for ensuring sustainable investments.

88. Human rights due diligence was also increasingly included in the portfolio of corporate law firms, as it was increasingly seen as presenting opportunities for investors. The experience by one major firm of advising clients investing in natural resources and

land to increasingly bringing human rights into investment negotiations and "putting humans into the corporate speak of due diligence" was shared. A number of elements to be considered for moving towards better practices and contracts were highlighted, including short durations, specifying the land and resources that were being allocated, flexibility to re-negotiate contracts, making entitlements of investors subject to national law and development priorities, avoiding "stabilization clauses" and ensuring transparency.

89. Finally, the guidance on State-investor contracts by the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises was highlighted as a key reference.[9]

## D. Strengthening implementation of the State duty to protect human rights through a national action plan

90. Another main objective of the forum was to promote development of national action plans for implementing the Guiding Principles in Africa and identify essential elements of such plans that would be of particular relevance in the local context. Thus, a key session of the event was the panel focused on national action plans, which also served the purpose of consultation with local stakeholders on the Working Group's efforts to develop guidance to support States in developing national action plans.[10]

91. A key message from the Working Group on Business and Human Rights throughout the event was that national action plans were especially well-suited to advancing policy coherence and implementation of the Guiding Principles.

92. The experience of the Government of Mozambique in developing a strategy for implementing the Guiding Principles through a 2013 national initiative was shared at the forum. The Government's efforts would eventually result in a baseline study and drafting of a national action plan. In that context, the need for broad consultations with all relevant stakeholders and the Government's need for financial and technical support, from international donors as well as international and regional organizations, were emphasized.

93. Another example was given by a representative of the Moroccan National Human Rights Commission. It had launched a multi-stakeholder dialogue process and started work to produce reports on specific issues, all which were going to feed into a national action plan to be developed by the Government. Four points were emphasized:

(a) There was a need to sensitize Governments to the very specific problems which must be tackled;

(b) There was a need to include all stakeholders;

(c) While it was important to have guidance from the Working Group, business and human rights challenges differed across countries, so national action plans would be different from one country to another;

(d) National human rights institutions were very important in many regards: they helped evaluate the situation, played a role in bringing stakeholders together and could support capacity-building.

94. The session also featured the presentation of a toolkit developed by the International Corporate Accountability Roundtable and the Danish Institute for Human Rights, intended

[9] See annex II.

[10] This guidance document was launched in December 2014. Available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

to guide States and other actors in developing national baseline studies and national action plans. A number of specific issues relevant to national action plans in the African region were raised: the role of international investment agreements; legislation pertaining to environmental impact assessments; the impact of foreign direct investment; addressing transparency and accountability of State-linked businesses; and the sharing of knowledge among different States.

95. Further discussion addressed the position held by some that the Guiding Principles and the development of national action plans, and the idea of a binding international treaty on business and human rights were in opposition to each other. It was argued that this was a mistake, and that independently of deliberations on a treaty, there should be focus on developing plans that addressed the existing business and human rights challenges in various countries. Three main issues were highlighted:

(a) Gender: there was a need to look at the impacts which were specific to women;

(b) Conflict zones: business and human rights challenges were very particular in such contexts;

(c) The need to tackle issues of extraterritoriality and access to remedy.

96. Other issues addressed during the discussions included the different challenges facing developed and developing economies, as well as the need to look at the issue of tax avoidance as a central business and human rights challenge.

## IX. Closing plenary: the way forward for the African business and human rights agenda

97. Speakers in the high-level closing plenary reiterated the importance of the Guiding Principles as an authoritative framework to prevent and address adverse human rights risks and impacts of business activities, and emphasized the urgent need to scale up its implementation across the continent.

98. The United Nations Resident Coordinator in Ethiopia stressed that economic growth needed to be coupled with respect for human rights, and human dignity needed to be at the centre of development. It was further stated that the Guiding Principles offered practical and complex guidance to States and businesses to make that happen. The United Nations system was a relevant partner for Governments in that effort but, importantly, African strategies should be driven by African actors.

99. From a pan-African business viewpoint, human rights were just one of dozens of considerations that companies must take into account every day. While the type of involvement by companies depended on the challenges faced, the contexts in which they operated and their core business, the responsibility to respect human rights was nevertheless the same for all companies. One critical challenge was that the concept of human rights due diligence had yet to enter the business arena in Africa, and there was a need for capacity-building. It was further emphasized that the Guiding Principles provided a useful framework for addressing problems, and need to be contextualized at company level and integrated into company strategies.

100. With regard to the role of civil society in advancing the business and human rights agenda in Africa, a number of challenges were highlighted, although it was noted that not all were relevant for all countries: disparity between growth in gross domestic product and human development; a lack of an independent judiciary; operations by foreign providing

revenues to oppressive authorities; corruption; and the need to strengthen rule of law. Specific suggestions regarding the role of civil society included:

(a) The need to ensure that civil society was invited to and had the resources to take part in international conferences such as the 2014 Africa Summit convened by the Government of the United States of America;

(b) The need for African civil society organizations to work more closely with home States of transnational corporations to clarify the actual problems on the ground;

(c) African civil society organizations should use the United Nations system, including the special procedures of the Human Rights Council, the universal periodic review and the treaty bodies to request action on business and human rights by their respective Governments;

(d) Explore the development of an international tribunal to adjudicate some of the gross human rights violations involving business enterprises;

(e) Address tax justice issues, as illicit financial flows were seen as an important part of current problems.

101. In the closing remarks from the representative of the African Union Commission, the commitment to engage with the Working Group to develop an African strategy to implement the Guiding Principles was reiterated. Moreover, the potential of national action plans to ensure constructive national dialogue and effective implementation of the Principles, which ultimately should contribute to the well-being of individuals on the continent, was emphasized.

102. The members of the Working Group noted that the forum had been an unprecedented event, convening for the first time such a range of stakeholders from the whole region to come together to discuss business and human rights issues. The forum had also shown that increasing attention was being paid to the effects of economic growth and investment on the environment and the human rights of workers and local communities. The Working Group recalled in that regard that African States had played an active role in the development of the United Nations Framework, and joined the global consensus endorsing the Guiding Principles. It also underlined the crucial role of civil society and affected stakeholders in demanding greater accountability, and recalled how many participants had pointed to the potential of the Guiding Principles as a platform for breaking political deadlock, and for transcending the adversarial roles that too often characterized relationships between communities and companies.

103. In going forward, the Working Group highlighted the following issues as critical to achieving progress:

(a) The importance of national action plans: they should be based on inclusive consultation and result in focused actions to strengthen prevention and remedy of adverse business-related human rights impacts;

(b) The need to enhance access to remedy, strengthen the independence of the judiciary and build capacity to address business and human rights abuses;

(c) Ensure that economic growth did not come at the cost of human rights.

104. Among remaining challenges that needed further attention, the members of the Working Group highlighted the lack of transparency surrounding State-investor contracts and the activities of State-owned enterprises, as well as lack of oversight over booming sectors in the region, such as agribusiness, telecommunications and retail.

105. Finally, the members of the Working Group stressed the need for solutions that took into account those challenges, and acknowledged the realities of twenty-first century

globalization. In going forward, the Working Group concluded that the dialogue among the key economic and political actors driving global corporate accountability, including the African Union and stakeholders in the region, must continue.

# X. The Working Group's reflections on the proceedings of the regional forum: conclusions and recommendations

106. **The Working Group would like to express its appreciation to organizing partners, supporters and all participants for their contributions to making the regional forum a successful event. It was encouraged by the interest in and support for the Guiding Principles expressed by the wide range of stakeholders who participated, as these actors form a critical part of the movement that is needed to scale up action on the Guiding Principles in all regions.**

107. **The discussions at the regional forum made a significant contribution in informing the Working Group's efforts to promote the effective implementation of the Guiding Principles worldwide. Based on the inputs from participants, the Working Group would like to make the following observations and recommendations:**

**(a) The Regional Forum provided a unique opportunity for multi-stakeholder dialogue and cooperation on business and human rights among relevant actors in Africa: multi-stakeholder engagement, involving all relevant groups, should be a central element for further progress, both at regional and national levels, in order to ensure effectiveness and legitimacy;**

**(b) In order to take advantage of the momentum created by the regional forum, strengthen the sharing of experiences and practices on implementation of the Guiding Principles across countries in the region and continue to reinforce the links between the global and regional business and human rights agendas (including to inform the annual Forum on Business and Human Rights),[11] the Working Group encourages stakeholders in Africa to convene local business and human rights forums to share lessons and discuss solutions to aspects related to implementation of the Guiding Principles;**

**(c) Effective implementation of the Guiding Principles requires ownership by local stakeholders, and the Working Group commends the African Union Commission for its commitment to promoting concrete action plans, tailored to the realities of African countries, to implement the Guiding Principles.[12] The Working Group would like to encourage the African Union Commission and relevant mechanisms of the African Commission on Human and Peoples' Rights, in particular the Working Group on Extractive Industries, Environment and Human Rights Violations, to support the development of such national action plans in alignment with the Guiding Principles and in collaboration with itself and OHCHR;**

**(d) All stakeholder groups at the regional forum stressed the importance of national action plans on business and human rights. These were seen as a means to strengthen accountability and access to remedy and to ensure that human rights become an integral part of efforts to promote economic growth and development does not come at the expense of those rights. The Working Group calls on all African States**

[11] The next annual Forum will be held in Geneva, Switzerland, from 16 to 18 November 2015.

[12] See OHCHR press release, "UN and AU commit to advance business and human rights agenda in Africa", 18 September 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15053&LangID=E.

**to develop national action plans to implement the Guiding Principles, through transparent and inclusive processes that involve all relevant stakeholders, including business, civil society and persons affected;**

**(e) The Working Group welcomes the work already done by many national human rights institutions in the region to promote implementation of the Guiding Principles. It would like to encourage national institutions in all countries to give focused attention to the area of human rights and business and promote the implementation of the Guiding Principles, including by building their own capacity and that of other stakeholders and supporting the development of national action plans in their respective countries**

**(f) The Working Group is concerned by reports of continued — and in some instances, increasing — adverse business-related human rights impacts across the continent, including relating to the difficult situation of human rights defenders, negative impacts on the human rights of communities affected by extractive projects and land investments, disproportionate impacts on women and children, impacts on livelihoods and health, violations of core labour rights and serious abuse involving public and private security forces engaged by companies;**

**(g) The Working Group calls on all African States and business enterprises in the region — both domestic and transnational corporations — to meet their respective duties and responsibilities set out in the Guiding Principles: the State duty to protect against human rights abuse, the corporate responsibility to respect human rights and the need to enhance access to remedy for victims. It also calls on home States of transnational corporations to play a constructive role;**

**(h) The Working Group has identified a lack of transparency and of access to information in the context of investments and large-scale business operations as a key challenge, and it recommends that Government and business actors ensure meaningful engagement with affected stakeholders, human rights defenders, civil society organizations and national parliaments, in order for stakeholders to get access to all relevant information that may have implications for their human rights. In that regard, the Working Group refers to the guidance provided in the principles for responsible State-investor contr**

**(i) Greater transparency, combined with adequate space for civil society and free media, is also critical to addressing another issue highlighted at the forum: the challenges of corruption and tax evasions, involving both Government officials and companies, which undermine the capacity of the State to fulfil the basic economic and social rights that are being neglected;**

**(j) The Working Group is particularly concerned by the lack of progress in ensuring access to effective remedy for victims of business-related human rights abuse. It calls on States to meet their duty to ensure access to effective remedy, through judicial and non-judicial mechanisms, including by addressing barriers to access to justice and strengthening the independence and capacity of the judiciary. Companies should establish or take part in joint efforts to set up operational-level grievance mechanisms for directly affected stakeholders that are in line with the criteria set out in the Guiding Principles;**

[13] See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31/Add.3.

**(k) The Working Group is pleased to support the current OHCHR initiative to enhance accountability and access to remedy in cases of business involvement in human rights abuses and the programme of work that aims to contribute to a fairer and more effective system of domestic law remedies in cases of business involvement in severe human rights abuses. It encourages African stakeholders to contribute to that initiative;**[14]

**(l) The Working Group encourages civil society organizations across the continent to ask Governments to develop national action plans to implement the Guiding Principles and to use and submit information to international human rights mechanisms, such as the universal periodic review, the special procedures of the Human Rights Council and the human rights treaty bodies, to raise awareness of business-related human rights impacts in the region, and strengthen the calls on States and businesses to implement the Guiding Principles;**

**(m) The Working Group welcomes the work done by employers organizations, industry associations and the United Nations Global Compact and its Local Networks to raise awareness among African businesses of the Guiding Principles, and would like to encourage the scaling up of those efforts, including through capacity-building efforts and collaboration with civil society, national human rights institutions and the United Nations system;**

**(n) The Working Group encourages donors and international organizations to support African Governments in developing national action plans to implement the Guiding Principles and support civil society organizations in their role of demanding greater action and accountability on business and human rights.**

108. **The Working Group seeks to continue to pursue the organization of regional forums, subject to donor funding, in order to strive towards the purposes for which they were designed:**

**(a) To gather relevant stakeholders in the region together, so that they can: (i) engage together in a process designed to identify existing challenges to human rights posed by business operations in their region; (ii) consider how the Guiding Principles can be employed in the best way to address those challenges; and (iii) galvanize action on those issues following the regional forum;**

**(b) To feed into the annual forum, so that (i) the annual forum reflects real-life challenges and practices on the ground and (ii) the Working Group can take good practices identified in the region and share them more widely at the annual forum.**

[14] See www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx.

# Appendix

*[English only]*

## Highlights from side events and list of panel speakers

## I. Highlights from side events

### A. Key features and implications of the Guiding Principles on Business and Human Rights

1. A key objective of the regional forum was to offer an opportunity for capacity building to participants. To this end, the first day included a training session on the Guiding Principles, conducted by OHCHR.[a] Participants were given an overview of the state of play and the "what to do" in this field, notably the key elements of the three pillars of the Guiding Principles and the respective roles of States and business:

(i) The State duty to protect against human rights abuse resulting from business activities through appropriate policies, regulation and adjudication;

(ii) The corporate responsibility to respect human rights by acting with due diligence to avoid infringement on human rights and addressing adverse impacts that do occur;

(iii) Enhancing access to effective remedy for victims of business-related human rights abuse, through both judicial and non-judicial grievance mechanisms.

2. Participants learned about the main features of the Guiding Principles and that they apply to all States and to all companies, of all sizes, in every sector, and in any country; contain distinct, but complementary duties, responsibilities and roles of States and companies; contain no new legal obligations, but elaborate on the practical implications of existing international legal obligations of States and standards and practices for business; clarify that human rights cannot be "offset", meaning that philanthropic activities cannot compensate for human rights harms elsewhere; and contain a "smart mix" of both regulatory and voluntary approaches.

3. During the discussion a number of frequently asked questions were addressed:

- *If the Guiding Principles themselves are not a legally binding document, how does civil society monitor their implementation, and what are the implications of the proposed treaty on business and human rights*: It was clarified that the Guiding Principles are based on existing international human rights law, and that civil society is encouraged to use the Guiding Principles as a benchmark in their monitoring of States' performance, including to ask questions to States about what actions they are taking to implement the Guiding Principles in processes such as the Universal Periodic Review and human rights treaty body reporting. With regard to the proposed treaty, it was noted that at this stage it is unclear what it will look like, but that proponents of a treaty generally argued that such instrument would build upon the framework set out in the Guiding Principles.

[a] The presentation is available at http://www.ohchr.org/Documents/Issues/Business/ForumSession3/IntroductionUNGuidingPrinciplesBusinessHR_en.pdf.

- *How to deal with the conflict between international law and national law*: It was clarified that the Guiding Principles do not tell companies to break the law in the countries they are operating, but also recognize that sometimes national laws are in conflict with international legal standards, in which case the Guiding Principles prescribe that the responsibility of companies to respect human rights exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and thus exists over and above compliance with national laws and regulations.

- *What is the relationship between Guiding Principles and corporate social responsibility (CSR)*: Participants heard that the Guiding Principles set out the minimum standards for companies when it comes to human rights — that is, to ensure that they do no harm and respect human rights wherever they operate — but that there is nothing in the Guiding Principles that prevent them from pursuing CSR activities that go beyond these minimum standards.

## B. Human rights and business tools

4. With the objective of providing regional forum participants with an overview of some of the tools available to stakeholders in the area of business and human rights, a joint session was hosted by the United Nations Global Compact and the Business and Human Rights Resource Centre.

5. The Global Compact Kenya Local Network gave a brief introduction on the United Nations Global Compact, the UN Guiding Principles and the relationship between these two mechanisms. Reference was made to various activities carried out by Local Global Compact Networks to promote business and human rights, such as a "human rights and business dilemmas" forum, trainings, sharing good practice notes and case studies, and promotion of several special initiatives. The topics ranged from access to water, business in conflict, child labour, decent jobs, gender equality, and human trafficking to product misuse.

6. The Business and Human Rights Resource Centre introduced how it works as an information hub on different issues in relation to business and human rights. Its website now includes the profiles of 5000 companies, featuring concerns raised by NGOs about human rights abuses by companies and the responses from companies, positive initiatives by companies, the work of United Nations Working Group as well as some regional briefings on key business and human rights trends. The Resource Centre has representatives and researchers in all regions, including several in Africa, covering the different sub-regions.

7. Discussion with the audience focused on the Resource Centre's approach to publish concerns about alleged human rights impacts of individual companies and to invite implicated companies to respond after receiving the concerns raised by other stakeholders. It was noted that companies appreciate this approach, and that at the same time, the Resource Centre also publishes the positive initiatives of companies.

## C. Human rights reporting in the African context

8. A session focused on human rights reporting was hosted by Shift. It was organized as a consultation composed of two parts: the first part focusing on human rights reporting in the African context, and the second part seeking views on the human rights reporting

framework being developed by Shift through the Reporting and Assurance Frameworks Initiative ("RAFI").[b]

9. The introduction provided participants with an overview of current trends for human rights reporting, highlighting that there is increasing demand for information from companies on their human rights performance. Research conducted during the mandate of former Special Representative of the United Nations Secretary General on business and human rights, John Ruggie, was highlighted, in which 20 law firms in 39 jurisdictions (including Africa) looked at how corporate and securities laws were evolving to reflect human rights.[c] This research showed that the demand for sustainability reporting was on the rise. More recent research by Shift had found a further increase in demands for corporate reporting specifically on human rights from a wide range of stakeholders, including international organizations, national legislators, regulators, stock exchanges, and investors. Many of these initiatives reference the Guiding Principles as a key framework for reporting.[d]

10. Other panel presentations provided perspectives from both business and civil society angles. From a business perspective, the initial focus was on the drivers for reporting on the African continent, highlighting the increase in demand for information on how companies are integrating the Guiding Principles. It was pointed out that producing this type of information can in turn help companies improve their human rights performance and their relationship with communities, while noting a number of specific challenges that remain, including lack of knowledge and capacity on how to implement the Guiding Principles. Participants also heard from experiences of facilitating dialogue between companies and communities on the ground in Malawi. This contribution highlighted the kind of information that communities are seeking. Communities want information from companies throughout the lifecycle of a project, from the inception, all the way to the winding up of a project. It was underscored that companies' communication needs to be tailored to the situation of communities and include concrete and practical information, such the human rights assessment tools the company is applying, how it is complying with international standards, audit procedures, and its human rights due diligence, and how its plans for meaningful stakeholder engagement. Failure to deliver on such information may have real impacts for a company, as highlighted by cases picked up by the media. Finally, it was stressed that the Guiding Principles provide a good platform for engagement, seeking redress and trust building among key stakeholders.

11. Further discussion with participants highlighted that regulatory frameworks across the continent remain weak and that companies tend to evade their responsibility towards communities and affected stakeholders. Civil society participants also expressed dissatisfaction with the type of information that is currently provided by companies operating in Africa on how they are addressing human rights risks. It was also highlighted that drivers for reporting such as legislation and stock exchange requirements that are

[b] The RAFI web page: http://business-humanrights.org/en/business-and-human-rights-reporting-and-assurance-frameworks-initiative-rafi#recent. A full summary of the session held on 16 September is available at http://business-humanrights.org/sites/default/files/reports-and-materials/Report%20of%20Ethiopia%20Consultation%20-%202014%2009%2016%20Final.pdf.

[c] Human rights and corporate law: trends and observations from a cross-national study conducted by the Special Representative. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31/Add.2, 23 May 2011.

[d] Shift, Update to John Ruggie's Corporate Law Project: Human Rights Reporting Initiatives (2013), available at http://shiftproject.org/sites/default/files/Update%20to%20Corporate%20Law%20Project%20November%202013.pdf.

evolving in other regions, are less at play in Africa, and that currently it is rather civil society organizations that are providing the strongest push behind demands for better disclosure, but that most organizations lack capacity and resources.

12. Shift also presented the ongoing RAFI project, which is seeking to address the increase in demands for corporate reporting on human rights performance and the risk of highly divergent understandings of what this means in practice. The aim of the project is to develop a twin set of frameworks grounded on the Guiding Principles: one with guidance for companies on what good reporting on human rights looks like and the other with guidance on what good assurance of such reports would involve. During the discussion participants raised a number of issues that were relevant both for the African context and beyond, including that reporting cannot replace dialogue with communities, the need to take into account the role of the State, how to ensure accuracy of information provided by companies, ensuring alignment with other initiatives, and ensuring that the data used for reporting actually helps companies improve their human rights performance.

## D. Building capacity for participatory monitoring and joint fact finding

13. The World Bank Group Compliance Advisor Ombudsman (CAO) and Global Rights (Coordinator of the African Coalition for Corporate Accountability), with support from the United Nations Global Compact, hosted a practically oriented session entitled "What to do when project impacts are in dispute – Seeking solutions through participatory monitoring and joint fact-finding with companies, communities, CSOs, and governments".

14. The goal of the session was to examine the process through which NGOs can collaborate with companies in monitoring corporate impacts based on guidance from CAO.[c] Participants were given an introduction to the functions of CAO as an accountability mechanism, set up to receive complaints directly from people affected by projects sponsored by IFC or MIGA: through dispute resolution, assessing compliance with IFC safeguards (which includes elements of the second pillar of the Guiding Principles), and advising stakeholders. A specific focus of the session was on participatory water monitoring, defined as "a participatory approach to monitor water. In the process, it not only generates credible data and information but also builds trust and helps resolve or avoid conflict surrounding perceived or actual impacts."

15. Some of the challenges of participatory water monitoring highlighted at the session included:

- Capacity of communities;
- Turnover in companies and communities;
- Unclear legal liabilities, i.e. who is responsible for cleaning things up?
- Role of governments which oftentimes side with companies.

16. The key process elements of participatory water monitoring included:

- Starting point: oftentimes, companies and NGOs do separate monitoring, which leads to dispute over the results and lack in trust;
- Participatory monitoring describes process in which to do the different steps together: collecting, analysing, interpreting, sharing results;
- Idea is to include communities and local stakeholders, so participatory process is not only scientific, but also social, political, and cultural;

[c] Available at http://www.cao-ombudsman.org/howwework/advisor/documents/watermoneng.pdf.

- Goals and outcome: more credibility of data generated, helps to create trust by relevant local stakeholders;
- Can help prevent conflict, but also mitigate conflict;

17. Through discussions that sought to examine the perspectives of the common stakeholder groups in water monitoring — communities, international NGOs, companies and local Governments — the following challenges were identified:

- Communication: when should what be communicated to whom?
- Identification of communities;
- Finding ways/methodologies for the community to participate, e.g. how to ensure representativeness, how to deal with the issue of illiteracy.

## E. Community-based human rights impact assessment methodologies

18. Oxfam and the International Federation of Human Rights Leagues (FIDH) hosted a session focused on community-based human rights impact assessment methodologies, introducing the tool 'Getting it right'.[1] This tool is based on six phases: preparation; legal framework; adapting the guide; investigation processes; analysis and report; engagement, monitoring and follow-up.

19. The session addressed the difference notions of social Impact assessment (SIA), human rights impact assessments (HRIA) and environmental impact assessments (EIA), highlighting several dimensions:

- The reference against which operations are analysed differs:
  - SIA: broad range of social impacts;
  - HRIA: impacts on human rights, anchored in international conventions;
  - EIA: impacts on environment;
- Perspective of how they have been applied:
  - SIAs and EIAs are the traditional instruments taken by companies and have mostly been implemented from a strong company-perspective;
  - HRIA methodologies have a stronger focus on the perspective of rights holders.

20. It was noted that there is a general view that with the gaining importance of human rights due diligence, the SIAs will be replaced by HRIAs, and that one of the strong advantages of HRIAs is a clearer understanding of who is responsible for what. However, opinions continue to differ as to what extent HRIAs and EIAs should be integrated.

21. Discussion in the sessions was very rich, with company representatives, community representatives, international NGOs, and academics engaging in very constructive debates on how HRIAs should be carried out in practice.

## F. Commerce, crime and human rights

22. The International Corporate Accountability Roundtable (ICAR) and Amnesty International (AI) hosted a side event workshop with invited experts from the African

[1] Available at http://hria.equalit.ie/en/.

region to discuss prosecution opportunities as well as the challenges that currently exist and how to overcome them. The event was convened with the support of OHCHR.

23. The purpose of the event was to gather inputs to the ICAR/AI "Commerce, Crime, and Human Rights Project",[8] and the OHCHR programme of work aimed at enhancing accountability and access to remedy, the aim of which is to develop reliable and credible guidance for States as to how they can contribute to a fairer and more effective system of domestic law remedies, particularly in cases of gross human rights abuses.

24. This discussion identified perceived and actual obstacles that hinder prosecutions, as well as existing laws that may allow for the prosecution of corporate crimes at the national and international level. Participants shared recommendations on how to address obstacles.

25. Some of the obstacles identified included:

(i) The limitations of the structure and mandate of the relevant investigative and prosecutorial offices;

(ii) Corruption among the judiciary;

(iii) Personal jurisdiction limitations;

(iv) Lack of access to evidence.

26. Recommendations put forward included:

(a) Establish and support specialized units that have a full mandate to investigate and prosecute;

(b) Take lessons from the successes of the Foreign Corrupt Practices' Act, leadership of the United States in particular on anti-corruption;

(c) Consider how these obstacles may be addressed through an international agreement;

(d) Better collaboration between and among governments, particularly in cases where multinational companies are involved;

(e) Reform the types of sanctions that are available so that corporate culture can be addressed when necessary.

27. In general, the point was made that not enough cases have been tried in the African region to have a perfect sense of what the key obstacles are, and that more work must be done to ensure that these cases are investigated and tried.

# II. List of panel speakers

## A. Opening plenary session: A vision for implementing the United Nations "Protect, Respect and Remedy" Framework across Africa

28. The chairperson of the United Nations Working Group, Michael K. Addo, delivered introductory remarks. Opening statements were delivered by the Minister of Justice of Ethiopia, Getachew Ambaye; the Acting Director of the Department of Political Affairs of the African Union Commission, Mamadou Dia; and the Deputy Executive Secretary of UNECA, Abdalla Hamdok.

[8] http://www.commercecrimehumanrights.org/

## B. Plenary 2: Identifying key business and human rights challenges and opportunities across the continent

29. The session was chaired by the vice chairperson of United Nations Working Group, Margaret Jungk. Panel participants were ILO Deputy Regional Director for Africa, Dayina Mayenga; Jacqueline Mugo, Secretary General of Business Africa; and Mutuso Dhliwayo, Executive Director of the Zimbabwe Environmental Law Association.

## C. Plenary 3: Preventing and addressing adverse human rights impacts in the extractive industries: challenges, opportunities and current practice

30. The session was chaired by Chaired by Valerio Bosco, Economic Affairs Officer in the Mineral Sector Governance Team, Africa Minerals Development Centre, UNECA. Panellists were Sheila Keetharuth, member of Working Group on Extractive Industries, Environment and Human Rights Violations, Africa Commission for People's' and Human Rights; Gifty A.M. Biyira, Director (Adm), Ministry of Lands and Natural Resources, Ghana; Delphine Djiraibe, Senior human rights lawyer and chief attorney at the Public Interest Law Center (Chad); Israel Chokuwenga, Principal Advisor Global Communities and Social Performance, Rio Tinto (South Africa); and Rose Kimotho from the Institute for Human Rights and Business and the Nairobi Initiative (a multi-stakeholder initiative on business and human rights for the oil and gas sector).

## D. Parallel track: Discussions on access to remedy

### 1. Multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts

31. The panel was moderated by chairperson of the United Nations Working Group, Michael K. Addo. Panel participants were Lene Wendland, Business and Human Rights Adviser, OHCHR; Dickay Kunda, an affected stakeholder from the Kilwa community in the Democratic Republic of the Congo; Lauretta Lamptey, Commissioner on Human Rights and Administrative Justice, Ghana, and Chairperson of the Network of African National Human Rights Institutions; Angela Mudukuti, Southern Africa Litigation Centre; Emmanuel Umpula Nkumba, African Resources Watch; and Weru Macharia, International Organisation of Employers, Kenya.

### 2. Access to non-judicial remedy: Experiences and lessons from the continent in ensuring access to remedy for affected stakeholders through operational-level grievance mechanisms

32. The session was moderated by Brian Ganson from Africa Center for Dispute Settlement at the University of Cape Town. Panel participants were Purvi Shah from De Beers Group, Scott Adams from World Bank Group, Sylvia Kithinji from Kenya Human Rights Commission, Franck Loufoua-Bessi from Rencontre pour la Paix et les Droits de l'Homme and Austin Onuoha from the Africa Centre for Corporate Responsibility.

## E. Parallel track: Business and human rights in the African context

### 1. Integrating the corporate responsibility to respect human rights across African businesses: challenges and opportunities

33. The session was moderated by United Nations Working Group member Puvan Selvanathan. The panelists were Manafa Shaffi Masai from Uganda Global Compact Network, Alan Fine from Russell & Associates, Anthony Baah Deputy Secretary-General from the International Trade Union Confederation (ITUC-Africa), Joseph Kibugu from the Business and Human Rights Resource Center and Sophie Mueller from the European Commission.

### 2. An African strategy to advance the business and human rights agenda

34. The session was moderated by Mamadou Dia, the Acting Director of the Department of Political Affairs of the African Union Commission. The panel included Adrian Gauci from UNECA, Gilbert Sebihogo from the Network of African National Human Rights Institutions, and Wilmien Wicomb from the Constitutional Litigation Unit of the Legal Resources Centre (South Africa).

## F. Parallel track: Groups, contexts, sectors and national action plans

### 1. Supporting and protecting human rights defenders & the role of national human rights institutions

35. Moderator was Ahowanu Agbessi, Regional Representative at OHCHR's Central Africa Regional Office. The panellists were Lindiwe Mokate from the South African Human Rights Commission, James Mwenda from the Kenya National Commission on Human Rights, and former United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya.

### 2. Business and human rights in conflict contexts

36. Session moderator was Salah Hammad, Senior Human Rights Expert in the African Union Commission's Department of Political Affairs. The panel included Nokukhanya Mnewabe from Business and Human Rights Resource Center, Audrey Olivier-Muralt from Geneva Centre for Democratic Control of Armed Forces (DCAF), Raphael Rene Yoho Fils from MONUSCO and Paul Kapelus from Synergy and the South African Global Compact Network.

### 3. Investment in land: applying a human rights lens

37. Moderator was Belay Demissie from UNECA. The panellists were Marc Wegerif from Oxfam Tanzania, Nadiah Hanim Abdul Latif from Sime Darby Berhad, Pregs Govender from the South African Human Rights Commission, Maria Alice Mabota from the Human Rights League (LDH) of Mozambique, and Odette Geldenhuys from Webber Wentzel.

### 4. Strengthening implementation of the State duty to protect human rights through a national action plan

38. Session moderator was the chairperson of Working Group Michael K. Addo. The panellists were Albachir Macassar, National Director for Human Rights at the Government of Mozambique, Nabila Tbeur, Executive Director at Morocco's National Human Rights

Commission, Sara Blackwell from the International Corporate Accountability Roundtable, and Bonita Meyersfeld from the Center for Applied Legal Studies (South Africa).

## G. Closing plenary: The way forward for the African business and human rights agenda

39. The session was chaired by the United Nations Resident Coordinator in Ethiopia, Eugene Owusu. The closing remarks were delivered by Margaret Jungk from the Working Group; Kebour Ghenna, the Executive Director of the Pan Africa Chamber of Commerce and Industry; Tutu Alicante, the Executive Director of EG Justice; and Mamadou Dia, the Acting Director of Department of Political Affairs of African Union Commission.